

**ORDINANCE NO. 2005- 011**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING AN INTEREST RATE EXCHANGE AGREEMENT WITH MERRILL LYNCH CAPITAL SERVICES, INC., AS THE COUNTERPARTY FOR THE PURPOSE OF REDUCING INTEREST COSTS TO THE COUNTY ON CERTAIN OUTSTANDING NON-AD VALOREM FIXED RATE BOND ISSUES; PROVIDING FOR CERTAIN OTHER MATTERS DEEMED NECESSARY AND PROPER IN CONNECTION THEREWITH; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION OF THIS ORDINANCE; AUTHORIZING USE OF THE EMERGENCY ENACTMENT PROCEDURE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Palm Beach County, Florida (the "County") issues its bonds and other obligations from time to time in order to provide funding for County projects; and

**WHEREAS,** under certain circumstances the use of an interest rate exchange agreement may serve the best interests of the County by reducing interest costs to the County and the use of such agreements can assist the County in managing its debt and limiting its risk; and

**WHEREAS,** the use of interest rate exchange agreements is not prohibited by Florida Law and the County has previously used this type of an agreement; and

**WHEREAS,** Merrill Lynch & Co., Inc. ("Merrill") has submitted a proposal (herein, the "Proposal") by which the County would amend the County's existing ISDA Master Agreement dated as of February 1, 1998 and schedule and enter into a new confirmation reflecting the Proposal (collectively, the "Interest Rate Exchange Agreement") with Merrill Lynch Capital Services, Inc., as the counterparty (herein, the "Counterparty"); and

**WHEREAS,** pursuant to the Proposal, the County would be obligated to make periodic payments to the Counterparty (herein, together with any termination or other payment

obligations of the County under the Interest Rate Exchange Agreement, the “County’s Obligations”) equal to The Bond Market Association Index (herein, the “BMA Index”) on a notional amount relating to certain outstanding fixed rate bonds of the County secured by a covenant to budget and appropriate the County’s non-ad valorem revenues (herein, the “Subject Bonds”) in exchange for periodic payments based on the same notional amount to be made by the Counterparty (herein, together with any termination or other payment obligations of the Counterparty under the Interest Rate Exchange Agreement, the “Counterparty’s Obligations”) equal to not less than 67% of the 30 day London Inter Bank Offering Rate (herein “LIBOR”); and

**WHEREAS**, pursuant to the Proposal, the County will receive a non-refundable up front payment from the Counterparty representing the present value of a portion of the future cash flows from the Counterparty under the Interest Rate Exchange Agreement (“Upfront Payment”); and

**WHEREAS**, such Upfront Payment will not have any impact on the future periodic payment obligations of each party agreed to under the Interest Rate Exchange Agreement; and

**WHEREAS**, since historically over the last ten (10) years the BMA Index has averaged 65.5% of LIBOR and any net payments that might be received by the County under the Interest Rate Exchange Agreement would lower the interest costs to the County with respect to the Subject Bonds and since the County’s Obligations will be payable solely from its legally available non-ad valorem revenues in the manner described in Section 5 hereof, the Debt Manager, in consultation with the County’s financial advisor, recommends that entering into the Interest Rate Exchange Agreement upon the terms described herein, would be in the best financial interest of the County; and

**WHEREAS**, the Board hereby accepts the recommendations of the Debt Manager and hereby deems that the Interest Rate Exchange Agreement will serve as a legitimate debt management tool and will serve a valid public purpose of the County; and

**WHEREAS**, since the current attractiveness of the Proposal is based on the current interest rate environment, the Board hereby finds that the need exists to enact this Ordinance as expeditiously as possible and that necessitates this Ordinance be enacted on an emergency basis pursuant to Section 125.66(3), Florida Statutes.

**NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:**

**Section 1.     CONFIRMATION OF RECITALS.** The above-recitals are hereby confirmed and incorporated herein and adopted by the Board as true and correct.

**Section 2.     AUTHORITY FOR THIS ORDINANCE.** This Ordinance is adopted pursuant to the provisions of the Constitution and laws of the State of Florida, including, particularly, the Charter of Palm Beach County, Florida, Chapter 125, and Chapter 166, Florida Statutes, and other applicable provision of law.

**Section 3.     AUTHORIZATION TO EXECUTE.** Subject to the parameters set forth in Section 4 below, the Board hereby authorizes the proper authorized officials of the County to execute the Interest Rate Exchange Agreement, with such insertions, modifications and changes as may be required to evidence the terms of the transaction outlined above, and the Chairman or the Vice Chairperson and the Clerk (if so required), upon such approval by the Debt Manager, are hereby authorized to execute and deliver the Interest Rate Exchange Agreement to the Counterparty. The execution and delivery of the Interest Rate Exchange Agreement shall be conclusive evidence of the approval thereof.



**Section 4. PARAMETERS FOR EXECUTION.** The Debt Manager, upon the advice of the County's financial advisor, the County Attorney and the County's special counsel are hereby directed to negotiate the financial terms of a confirmation in connection with the Interest Rate Exchange Agreement, subject to the following conditions:

- (a) The Upfront Payment payable by the Counterparty to the County shall not be less than \$2,500,000; and
- (b) The notional amount of the Interest Rate Exchange Agreement shall be determined by the outstanding principal amount of the Subject Bonds identified by the Debt Manager on or before the effective date of the Interest Rate Exchange Agreement; and
- (c) The notional amount will reduce as the principal amount of the Subject Bonds is amortized; and.
- (d) Netting of the County's Obligations and the Counterparty's Obligations will occur not more frequently than on a quarterly basis; and.
- (e) The guarantor of the Counterparty Obligations shall have a long-term and short-term rating from Moody's of at least Aa3/P-1 and/or from S&P of A+/A-1; and
- (f) Unless terminated earlier by the terms of the Interest Rate Exchange Agreement, the stated maturity of the Interest Rate Exchange Agreement shall be not later than December 1, 2017.

**Section 5. SOURCE OF COUNTY OBLIGATIONS.** During the term of the Interest Rate Agreement, for each fiscal year of the County, the County (i) will first budget and appropriate sufficient legally available non-ad valorem revenues in order to pay debt service in

such fiscal year on its obligations that are payable from its covenant to budget and appropriate non-ad valorem revenues and (ii) with respect to all other legally available non-ad valorem revenues that have not been budgeted and appropriated under clause (i) above, will budget and appropriate from such remaining legally available non-ad valorem revenues a sufficient amount to satisfy the County's Obligations under the Interest Rate Exchange Agreement for such fiscal year.

**Section 6. ADDITIONAL AUTHORIZATION** The Chairman, the Vice Chairperson, the Clerk, the County Administrator and the Debt Manager are each authorized and directed to execute and deliver all additional documents, contracts, instruments and certificates relating to the transaction relating to the Interest Rate Exchange Agreement; and to take all actions and steps and to incur such costs on behalf of the County which are necessary or desirable in connection with the Interest Rate Exchange Agreement.

**Section 7. NOT A DEBT OF THE COUNTY.** The County's full faith and credit and taxing power of the County are not pledged in any way to satisfy the County's Obligations and such obligations shall not constitute a debt within the meaning of any constitutional limitation of indebtedness.

**Section 8. REPEAL OF LAWS IN CONFLICT.** All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Section 9. SEVERABILITY.** If any Section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.** The provisions of this Ordinance shall become and be made a part of the Code of Laws and


Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

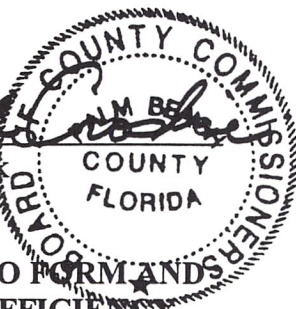
**Section 11. EMERGENCY ORDINANCE; EFFECTIVE DATE:** This Ordinance is determined to be and is adopted as an emergency ordinance in order to promote the best interests of the County. This Ordinance shall take effect immediately upon its passage in the manner provided by law.

**APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach County, Florida, on this the 17<sup>th</sup> day of May, 2005.

Attest:

**Sharon R. Bock, Clerk &  
Comptroller**

By:   
Deputy Clerk



**PALM BEACH COUNTY, FLORIDA,  
BY ITS BOARD OF COUNTY  
COMMISSIONERS**

By:   
Chairman

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By:   
County Attorney *mcc*

**EFFECTIVE DATE:** Pursuant to Section 125.66, Florida Statutes, this emergency Ordinance is deemed filed with the Department of State when a copy is accepted by the postal authorities of the Government of the United States for special delivery by certified mail to the Department of State on the 25<sup>th</sup> day of May, 2005, at 4:00 p.m.



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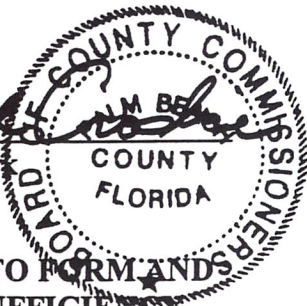
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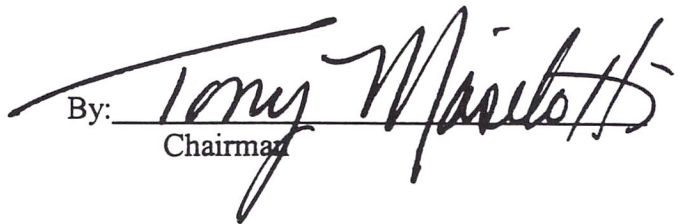
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BY ITS BOARD OF COUNTY  
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By:   
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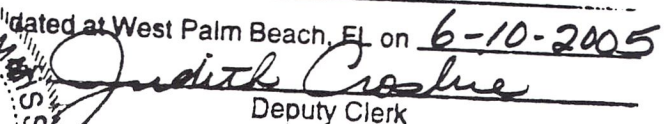
By:   
Chairman

**APPROVED AS TO FORM AND  
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By:   
County Attorney *mcc*

**EFFECTIVE DATE:** Pursuant to Section 125.66, Florida Statutes, this emergency Ordinance is deemed filed with the Department of State when a copy is accepted by the postal authorities of the Government of the United States for special delivery by certified mail to the Department of State on the 25<sup>th</sup> day of May, 2005, at 4:00 p.m.

STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, SHARON R. BOCK, Clerk & Comptroller certify  
this to be a true and correct copy of the original  
filed in my office on MAY 17 2005

dated at West Palm Beach, FL on 6-10-2005  
  
Deputy Clerk

